

FILED
JUL 10 2009

CLERK

IN THE UNITED STATES DISTRICT COURT IN AND FOR
DISTRICT OF SOUTH DAKOTA

SHIRLEE M. RHEAD,

Plaintiff,

v.

Case No. *CIV 09-4095*

(Moody County, S.D. Circuit Court, 3rd
Judicial District Case No. CIV-09-126)

FIRST NATIONS COMPENSATION
PLAN and SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC.,

Defendants.

**DEFENDANT SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.'S NOTICE OF REMOVAL**

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
SOUTH DAKOTA; THE CLERK OF THE CIRCUIT COURT, THIRD
JUDICIAL CIRCUIT, MOODY COUNTY, SOUTH DAKOTA; AND TO
THE PLAINTIFF NAMED ABOVE AND HER ATTORNEYS

This Notice of Removal of Defendant Sedgwick Claims Management Services, Inc.
("Sedgwick") is submitted pursuant to the provisions of 28 U.S.C. §§ 1332 and 1441 et seq. In
support of their Notice, Defendants state:

1. Sedgwick is a named defendant in an action filed on June 24, 2009, in the Third
Judicial Circuit Court, Moody County, State of South Dakota, styled Shirlee M. Rhead, Plaintiff
v. First Nations Compensation Plan and Sedgwick Claims Management Services, Inc.,
Defendants, Case No. CIV-09-126 (the "State Court Action"). A copy of the Complaint setting
forth Plaintiff's claims against the Defendants in the State Court Action is attached hereto as
Exhibit A.

2. Plaintiff is a resident of Moody County, State of South Dakota. (Exhibit A, ¶1).

3. Defendant Sedgwick is an Illinois corporation with its principal office and corporate headquarters located in Memphis, Shelby County, Tennessee.

4. Defendant First Nations Compensation Plan, Inc. ("FNCP") is organized under the laws of the Winnebago Tribe of Nebraska with its principal place of business in Grand Island, Hall County, Nebraska. On April 15, 2009, the United States Bankruptcy Court for the District of Nebraska issued its Emergency Orders staying any lawsuit, action or proceeding against FNCP until further Order of that Court. Copies of the relevant Orders are attached hereto as Exhibits B and C. Nonetheless, FNCP has consented to the removal of this action. See Exhibit D.

5. Sedgwick was first served with Summons and Complaint through its registered service agent, CT Corporation System on June 12, 2009. A copy of the Proof of Service with Summons served on Sedgwick is attached as Exhibit E.

6. Exhibit A and page 2 of Exhibit E constitute all of the process, pleadings and orders on file in Plaintiff's state court action that have been served on Sedgwick as of this date.

7. The Plaintiff's claims arise in connection with injuries allegedly suffered by her on March 10, 2007. On that date Plaintiff slipped and fell on ice at the premises of her employer, the Flandreau Santee Sioux Tribe (the "Tribe"). The Tribe had purchased an Occupational Injury Benefit Plan & Employers Liability Insurance Policy (the "Policy") from FNCP to protect the Tribe, including Royal River Casino, a name by which the Tribe conducts some of its business, for claims made by the Tribe's employees for injuries suffered in the course of their employment. In addition, prior to Plaintiff's alleged accident the Tribe enacted an Occupational Injury Ordinance governing the benefits to be paid and the procedures to be followed by employees of the Tribe seeking benefits for on-the-job injuries.

8. In the present action, Plaintiff, who was employee of the Tribe alleges, among other things, that: (1) she was injured when she fell on March 10, 2007 while entering the Royal River Casino prior to beginning her work shift (Exhibit A, ¶¶4-7); (2) she is a beneficiary of the Policy (Exhibit A, ¶8); (3) she is entitled to benefits under the Policy, including medical and rehabilitation expenses and disability benefits (Exhibit A, ¶¶9-10, 12-13, 14); (4) FNCP, acting through Sedgwick, denied her claim for benefits (Exhibit A, ¶23); (5) Defendants had no reasonable basis for denial of the claim for benefits and knew there was no reasonable basis for denial of the claim because the Tribe's Occupational Injury Ordinance had not been adopted as represented by Defendants (Exhibit A, ¶¶24); (6) Defendants are liable to Plaintiff for benefits under the South Dakota Workers' Compensation Act and other damages. (Exhibit A, ¶17).

9. In her prayer for relief, Plaintiff requests benefits under the South Dakota Workers' Compensation Act, compensatory damages, punitive damages and attorney fees in excess of the sum of \$75,000.00, exclusive of costs and interest. (Exhibit A, ¶13; Prayer for Relief).

10. Complete diversity of citizenship exists between the Plaintiff and the Defendants. Therefore, this Court would properly have original jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Accordingly, the action is removable under 28 U.S.C. § 1441.

11. Thirty (30) days have not yet expired since this action became removable to this Court. Accordingly, removal is timely.

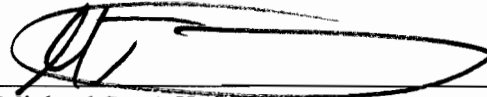
12. Copies of all process, pleadings and orders served upon the Defendants in the state court action are attached hereto as Exhibit A and page 2 of Exhibit E.

WHEREFORE, Sedgwick Claims Management Services, Inc. prays that the above-entitled action be removed from the Circuit Court for the Third Judicial Circuit, Moody County, South Dakota, to the United States District Court for the District of South Dakota.

Dated: July 10, 2009

**BOYCE, GREENFIELD, PASHBY &
WELK, LLP**

By:



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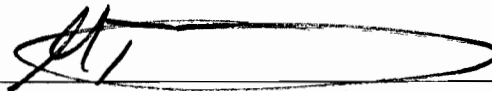
**ATTORNEYS FOR DEFENDANTS,
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.**

CERTIFICATE OF SERVICE

I do hereby certify that on this 10 day of July, 2009, a true and correct copy of the above and foregoing **DEFENDANT SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.'S NOTICE OF REMOVAL** was sent by U.S. Mail, with proper postage thereon fully paid, to:

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Flandreau, SD 57028

Wilson Kleibacker
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